

Brownfields Fact Sheet

October 2003

The Portland Harbor Superfund Site and Brownfields

IN DECEMBER 2000, THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) added the Portland Harbor Superfund Site to the National Priorities List (NPL), the most contaminated sites in the nation, because the Willamette River harbor sediments are contaminated with mercury, polychlorinated biphenyls, polyaromatic hydrocarbons, pesticides, metals, and other hazardous substances.

The contamination of the Willamette River sediment is being investigated, starting with a six-mile stretch between Swan and Sauvie Islands and working outwards, to determine the extent of contamination. In addition to contaminated sediment in the Willamette River, the Portland Harbor Superfund Site includes upland sources that contributed hazardous substances to the river. The Oregon Department of Environmental Quality (DEQ) is investigating current upland sources to the river.

The Portland Harbor Superfund Site's final boundaries will be determined after the completion of a Remedial Investigation and Feasibility

Study and a Record of Decision is issued. EPA, DEQ, six Native American tribes and other federal and state agencies are providing oversight for the investigation and cleanup of the river.

Some property owners within or near the Portland Harbor Superfund Site have expressed interest in using Brownfields grant funding provided by the Brownfields program, and/or using liability protections provided in recent statutory amendments to Superfund law to encourage cleanup and reuse of their properties. Some common questions about Brownfields grants and liability protection are answered in this fact sheet.

Can Property within the Portland Harbor Superfund Site use the Brownfields Grant Program?

Property within the Portland Harbor Superfund Site is generally not eligible for Brownfields grants, because the definition of Brownfields excludes facilities on the National Priorities List. However, Brownfields grants and technical assistance are available to deal with contaminated properties in the harbor area that are not associated with the contaminated sediments. In fact, EPA has ongoing Brownfields partnerships with the City of Portland, TriMet, and the Portland Development Commission, who have received Brownfields grants.

For more information on Brownfields on the Web:

www.epa.gov/brownfields

<http://www.epa.gov/swerrims/landrevitalization/index.htm>

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How are landowners protected from liability in the Brownfields Program?

The recent amendments to Superfund provide liability protections for landowners who are: (1) bona fide prospective purchasers, (2) contiguous property owners, or (3) innocent landowners. Landowners may qualify for these liability protections even if the property is part of an NPL site.

Whether a property owner within the Portland Harbor Superfund Site will qualify for one of the landowner protections is a case-by-case determination based on a site-specific factual inquiry. Superfund provides specific criteria that must be met to qualify for the landowner liability protections. Property owners should review the requirements at 42 USC §§ 9601(40)(B-H), 9607(q)(1)(A), 9601(35)(A)-(B) to evaluate their eligibility for these liability protections. At the Portland Harbor Superfund Site, for example, requirements for being a protected landowner include:

1. The landowner cannot itself be a Potentially Responsible Party (PRP), or affiliated with a PRP, for the Portland Harbor Superfund Site.
2. The landowner must conduct "all appropriate inquiry" prior to acquiring the property. While a purchaser can acquire with knowledge of the contamination and still be protected from liability under the prospective purchaser provision, a landowner will not have contiguous property owner or innocent landowner liability protection if it purchases with knowledge of the contamination. While a purchaser may not have Superfund liability, EPA may place a "windfall lien" on the property for any increase in property value due to EPA's cleanup actions.
3. The landowner must take "reasonable steps" to stop ongoing releases, and prevent threatened future releases, of hazardous substances to the Willamette River. A landowner's responsibility to take reasonable steps continues until cleanup is complete or there is no threat of future releases.
4. The landowner must provide all legally required notices for the discovery or release of any hazardous substances at the facility.
5. The landowner must cooperate with EPA, DEQ, and other parties authorized to conduct site cleanup actions. Requirements might include providing access, implementing or complying with land-use restrictions and institutional controls, providing input about planned future land use or other design-related information, and responding to information requests.

What are the primary guidance documents for the recent Superfund Landowner Liability Protection Amendments?

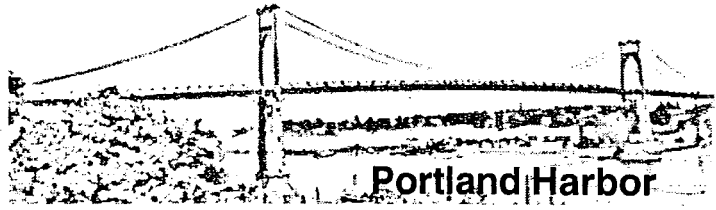
- Bona Fide Prospective Purchasers and New Amendments to CERCLA (5/31/03).
- Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability "Common Elements" (3/6/03).
- "Common Elements" Guidance Reference Sheet
- Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA (7/16/03).
- "Windfall Lien" Guidance FAQ.

These guidance documents and more information are available at
www.epa.gov/brownfields.

(EPA Contacts on page 4)



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The Portland Harbor Superfund Site and Brownfields

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